
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

Criminal Productions, Inc.

Plaintiff,

v.

Darren Brinkley,

Defendant.

Case No. 2:17-cv-00550-DBP

DECLARATION OF ATTORNEY LISA L. CLAY

1. I am an adult resident of the State of Illinois and an attorney who is licensed to practice law in Illinois, Washington (inactive) and Washington, D.C. (inactive). I am admitted pro hac vice in this matter.

2. I am familiar with the facts and circumstances set forth in this declaration and can testify to those matters stated herein if called upon to do so.

3. In addition to the fees described in detail in my prior declaration, I have billed the following hours:

<u>Date</u>	<u>Time</u>	<u>Amount</u>	<u>Description</u>
8/8	.1	\$40.00	Review email from local counsel authorizing filing of stipulation regarding extension of time to respond; review filed stipulation
8/9	.1	--	Review order regarding stipulation
8/14	.1	\$40.00	Emails with local counsel regarding response receipt and reply deadlines
8/15	.1	\$40.00	Emails with counsel regarding drafting deadlines and division of labor regarding reply
8/19			Review and analyze response (1.1); pull and evaluate cited case law (.4); draft reply brief (4.5); draft declaration (.5);

4. Paragraph nine of my prior declaration (ECF No. 65-1) refers to certain documents that at the time of that filing were labeled confidential and were not available for filing. I supplement my prior paragraph nine, as follows:

Current contracts¹ produced in the *Kabala* matter² suggest the following: *(1)* the entity controlling the litigation is currently referred to as “Copyright Management Services, Ltd.” or “CMS,” but both Millennium’s 30(b)(6) witness and the attorney retained by CMS to represent the Millennium special purpose entity (“SPE”) plaintiff (in that case, LHF Productions Inc., in this case, Criminal Productions, Inc.) both referred to CMS as “GuardaLey” at the recent deposition *(2)* CMS/GuardaLey, and not the Plaintiff, hires the lawyers to file these claims (See Exhibit 2, p. 1: “Crowell Law USA and Copyright Management Services, LLP (UK) are authorized to retain and manage the counsel listed in the schedule under the Rights Enforcement engagement for the enforcement of copyrights in the below titles:”); *(3)* CMS/GuardaLey and not the Plaintiff, is the party responsible for the litigation (See Exhibit 3, p. 2: “Client hereby designates CMS as its agent and the sole and exclusive agent and contact for management, reporting and decisions related to anticpiracy enforcement services of the works...”); *(4)* CMS/GuardaLey, and not the Plaintiff, pays the lawyers, through a contingency model that first reimburses CMS/Guardaley, then pays the attorneys, and then, presumably, Millennium – but never Plaintiff (See Exhibit 3, p. 3: “CMS has a panel of counsel who currently provide direct

¹ Exhibit 1: Crowell Law Millennium Films, Inc./ Nu Image Films June 16, 2016 correspondence; Exhibit 2: RightsEnforcement Schedule of Counsel and Titles – March 2017; Exhibit 3: Copyright Management Services Agreement; Exhibit 4: On-Line Copyright Infringement Logging Services Agreement.

² Plaintiff in the *Kabala* matter has produced versions of the contracts attached hereto with redactions of the percentages described in the contracts, on grounds that they “can harm the parties to the agreements.” *Kabala* has filed a motion challenging that designation, which is in the process of being briefed by the parties.

enforcement support to cover the majority of the United States population. Client hereby grants CMS authority to engage, on Client's behalf, the counsel's listed ... CMS is permitted to compensate local counsels under the below schedules of compensation..."); (5) Millennium and the Plaintiff have no skin in the game: costs, fees, and any damages are the sole responsibility of CMS (Exhibit 1, p. 2: "duties [of lead counsel Carl Crowell] will be to manage any economic return from the enforcement actions such that receipt will be maintained in trust to cover any reasonably foreseeable expenses, costs, and fees, including any foreseeable liability to Millennium related to enforcement actions..."; Exhibit 2, p. 2: "[Millennium] shall not be independently liable for any costs, fees, or expenses, which shall be the sole responsibility of CMS, in accordance with any agreements between CMS and counsels..."); (6) CMS/GuardaLey and not the SPE Plaintiff or Millennium "hires" the investigator – in this case Maverickeye (Exhibit 3 p. 3: "[Millenium] grants CMS the authority to engage the Internet monitoring company Maverickeye UG on Client's behalf to gather evidence of copyright infringement..."; Exhibit 3, p. 4: "[Millennium] hereby grants CMS authority to retain, on client's behalf, Maverickeye, UG and New Alchemy..."; Exhibit 4, p. 2; (7) the SPE Plaintiff has no involvement whatsoever in the activities of Maverickeye, as it did not hire MaverickEye and has no oversight over Maverickeye's activities (See contract references in paragraph (6); (8) It is CMS/Guardaley and the lawyers that financially benefit from these cases, not the SPE Plaintiff. (See remuneration terms contained in "Economics" section of Exhibit 1, p. 2; "Enforcement Program" section of Exhibit 3, p. 3-4; "Remuneration" section of Exhibit .4 p. 2.) It is my assumption that the reason an SPE is used as the Plaintiff is to protect the assets of the real parties in interest – Millennium and CMS/GuardaLey. Because *Criminal* is a Millennium film;

Criminal Productions, Inc. is specifically listed in Exhibit B; and Millennium uses form documents, it is assumed that these same arrangements apply to this case.

5. I redacted attorney client information from my bills and the bills of my colleagues as is my common practice. I am unaware of any requirement that I provide an opponent with privileged information regarding my fees. However, should the Court find unredacted versions of the invoices of Brinkley's counsel helpful for any reason, I will, of course, provide them upon request.

I, Lisa L. Clay, declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Dated: August 24, 2018

/s/ Lisa L. Clay